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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,151	05/29/2001	Richard R. Dziekan JR.	039362-0061	7471

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EXAMINER	
SAX, STEVEN PAUL	

ART UNIT	PAPER NUMBER
2174	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/867,151	DZIEKAN ET AL	
	Examiner	Art Unit	
	Steven P. Sax	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on 6/15/05.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-15 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

1. This application has been examined. The amendment filed 6/15/05 have been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis, Jr. et al. (5867483) and MacMullen (6484124).

4. Regarding claim 1, Ennis discloses a system and method for graphically representing information of the operation of a communication system for a user monitoring the performance of the system as follows:

a graphical user interface that simultaneously displays information representative of the operation of the system at a plurality of **test points** to the user (Abstract, Fig. 11);

a plurality of different bandwidths simultaneously presented to the user for each of the test points "The probe is connected to a packetized data network to monitor

network activity, while the console is in communication with the probe via a communications medium", and "For each sampling interval, the probe measures the access channel and individual circuit bandwidth utilization and increments the **appropriate counters** associated with the percentage ranges encompassing the measured bandwidth utilizations. The console polls the probe for the percentage counter data to selectively **display** the access channel or **individual circuit bandwidth utilization in the form of a bar graph and pie chart**" (Fig. 11, column 9 lines 5-35, column 15 lines 20-45), the plurality of different bandwidths displaying information representative of the operation of the system, and a graphical image representative of the operation of the system at the given test point for each bandwidth - *A console in communication with the probe polls the probe after a predetermined time period, or upon user request, to retrieve data collected by the probe. The probe determines the number of bits transmitted on specified transmission circuits and an individual access channel for each predetermined sampling interval, preferably set for one second.* ***A series of counters is utilized*** *by the probe to collect bandwidth utilization for the access channel and the individual circuits* ***wherein each counter represents a different bandwidth*** *utilization percentage (i.e., the percentage of the bandwidth capacity utilized) range* (col.10 lines 48-57, Figs.13,15). Ennis do not disclose that the information displayed for each test point is specifically the signal to noise ratio at the given test point for each bandwidth, but does disclose communication data related to the bandwidth for effective monitoring of performance. Furthermore, MacMullen shows information of signal to noise ratio at the given test point for each bandwidth, to present

communication data related to the bandwidth for effective monitoring of performance (column 10 lines 25-45, column 12 lines 10-35, column 15 lines 45-67, column 16 lines 1-14). It would have been obvious to a person with ordinary skill in the art to have this in Ennis, because it would allow effective monitoring of performance in a communication related device.

5. Regarding claims 2-3, in addition to what is recited in claim 1, Ennis discloses '*The present invention pertains to monitoring data transmission through communications systems. In particular, the present invention pertains to monitoring methods and apparatus for measuring and displaying peak throughput in data transmission systems to assess bandwidth utilization for an entire access channel or individual transmission circuits*' (col.1 lines 7-17), and '*The data transmission system typically includes conventional telecommunications line types, such as T3, OC-3, North American T1 (1.544 Mbits/second), CCITT (variable rate), 56K or 64K North American Digital Dataphone Service (DDS), and a variety of data communications connections, such as V.35, RS-449, EIA 530, X.21 and RS-232.*' (col.7 lines 6-12). Thus, a telephony system/ data system inherently are in the scope of Ennis's communication system as mentioned above.

6. Regarding claims 4-5, in addition to what is recited in claim 2, Ennis's communication system inherently has **a broadband** telephony system /data system

'*The data transmission system typically includes conventional telecommunications line types, such as T3, OC-3, North American T1 (**1.544 Mbits/second**), CCITT (variable rate), 56K or 64K North American Digital Dataphone Service* ' (col.7 lines 6-10).

7 Regarding claim 6, in addition to what is recited in claim 1, Ennis discloses for each bandwidth associated with a given test point, a graphical image representative of the signal-to-noise ratio of the system at the given test point is presented to the user (see Appendix A, cols. 27-28).

8. Regarding claim 7, in addition to what is recited in claim 6, Ennis discloses for each bandwidth associated with a given test point, a shading (first color) is presented to the user if the signal-to-noise ratio of the system at the given test point exceeds a predetermined threshold, and at least one further shading (color) is presented to the user if the signal-to-noise ratio of the system at the given test point fails to exceed the predetermined threshold '*For example, the fifteen minute interval starting approximately at 22:52 and ending at 22:07 has an access channel bandwidth utilization predominately in the 91%-100% range based on the height of the concatenated bar coded utilizing code 57 to indicate the 91%-100% range. Typically, the shades from green to yellow represent codes 53-55 (i.e., 0-60%), while the shades from yellow to red represent codes 55-57 (i.e., 41-100%), however, any color scheme or other indicia may be utilized to distinguish the percentage ranges*' (col.16 lines 33-42).

9. Claims 8-14 show the same features as recited in claims 1-7 respectively, and are rejected for the same reasons as those claims.

10. Claim 15 shows the same features as claim 1 and is rejected for the same reasons.

11. Applicant's arguments filed have been fully considered but they are not persuasive. Applicants summarize the 103 rejection. Independent claim 1 recites the language of information representative of the signal-to-noise ratio at the given test point for each bandwidth. Examiner acknowledges that Ennis does not teach that the information displayed for each test point is specifically the signal to noise ratio at the given test point for each bandwidth. Note though that McMullen does in fact show information of signal to noise ratio at the given test point for each bandwidth in the aforecited passages. McMullen may not show the graphical user interface displaying all of the information simultaneously, but does show presenting this information to the user. The obviousness lies in combining this feature into the system of Ennis et al, which then would simultaneously display all of the information, meaning thus for each of the test points for each bandwidth. (This is all that is combined; i.e. there is not a picking and choosing of elements from several references in an improper or contrived way.) Now, the motivation to do this is to allow effective monitoring of performance in a communication related device. This is not hindsight, but rather a goal of both patents. Thus the motivation is proper, and the features are properly combined which then bring out the invention as claimed.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven P. Sax whose telephone number is (571) 272-4072. The examiner can normally be reached on Monday thru Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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